burial at sea with the custom in such matters discharges the duty which the law imposes. But under the novel circumstances of the principal case, in the light of changing custom, due to improvements in embalming and in the rapidity of transportation, it is submitted that the decision is correct.

E. J. M.

CARRIERS—NON-DELIVERY—RESTRAINT OF PRINCES.—NORTH GERMAN LLOYD CLAIMANT OF KRONPRINZESSIN CECILIE v. GUARANTY TRUST CO. OF N. Y. AND NATIONAL CITY BANK OF N. Y. (1917) 37 SUP. CT. REP. 490.—The defendant contracted with the plaintiffs respectively to deliver shipments of gold at London *via* Plymouth and at Paris *via* Cherbourg; but was not to be liable for loss by "arrest and restraint of princes, rulers or people." When still two days from Plymouth the master received a telegram from the ship's owners at Bremen, stating, "War has broken out with England, France and Russia. Turn back to New York." The master turned back, putting into Bar Harbor, Me. The owners knew the message to be false, but the master did not. *Held,* that this was not a breach of defendant's contract. Pitney and Clarke, JJ., *dissenting.*

For a discussion of the principles involved in this case, see (1917) 26 YALE LAW JOURNAL, 247.

F. W. D.

CHARITABLE INSTITUTIONS—LIABILITY FOR TORTS.—LOEFFLER v. TRUSTEES OF SHEPPARD AND ENOCH PRATT HOSPITAL (1917) 100 ATL. (MD.) 301.—The plaintiff, a fireman properly engaged in extinguishing a fire, was injured because of the defective condition of a fire-escape in the building of the defendant, a charitable institution. *Held,* that the doctrine of *respondeat superior* does not apply in the case of charitable institutions whose funds are held in trust for special purposes.

The general rule has been to exempt charitable institutions from liability for the torts of their agents and servants. *Overholser v. National Home for Disabled Soldiers* (1903) 68 Oh. St. 236; *McDonald v. Massachusetts General Hospital* (1876) 120 Mass 432. Some courts have given as their reason for so holding that the funds should not be dissipated in giving damages since the object of the institution is a charitable one. *Jensen v. Maine Eye and Ear Infirmary* (1912) 107 Me. 408. This reason does not prevail in actions for breach of contract, as a charitable institution is liable in damages in such case. Another reason given for refusing to apply the doctrine of *respondeat superior* is that the work is not for the benefit of the institution, but for the benefit of its inmates. *Farrigan v. Pevear* (1906) 193 Mass. 147. This seems to be an inadequate reason; for in most cases it is not necessary that a principal be benefited by the servant's acts to be held liable. If the act is in the course of the servant's employment, the principal is answerable. Huffcut, *Agency,* p. 158. Still another reason given by some courts is that in cases where the person injured was seeking to obtain a benefit from the charitable institution he impliedly assumed the risk of injury due to negligence.

This of course is a fiction. These courts really hold that the plaintiff cannot recover whether he assumed the risk or not. It is submitted that the better rule is to allow the plaintiff to recover, so as to induce the defendant to use greater care in the management of its servants and in the carrying out the purposes of the trust. A recent tendency of some courts has been to give relief at the expense of charitable institutions. *Hordern v. Salvation Army* (1910) 199 N. Y. 233 (defective runway); *McInerny v. St. Luke's Hospital Association of Duluth* (1913) 122 Minn. 10 (dangerous machinery); *St. Paul's Sanitorium v. Williamson* (1914) 164 S. W. (Tex.) 36 (hiring unskilful nurse); *Tucker v. Mobile Infirmary Association* (1915) 191 Ala. 572.

F. L. McC.

CHOSES IN ACTION—NATURE OF PARTIAL ASSIGNEE'S INTEREST—EFFECT ON ASSIGNOR'S INTEREST OF JUDGMENT IN FAVOR OF PARTIAL ASSIGNEE.—CARVILL V. MIRROR FILMS, INC. (1917) 163 N. Y. S. 268.—An employee discharged in breach of his contract assigned his claim for damages accruing up to a certain date, reserving to himself all damages accruing after that period. The partial assignee sued alone, and recovered against the employer. The assignor now sues the latter who sets up as a defense the partial assignee's previous recovery. *Held,* that the assignor is entitled to recover.

It may not be inappropriate to notice that the word interest is used here to designate the aggregate of one's rights, privileges, powers and immunities. See Professor Hohfeld, Some Fundamental Legal Conceptions as Applied in Judicial Reasoning (1913) 23 YALE LAW JOURNAL, 16. The interest of the partial assignee was not protected at common law, but only in equity, as the device of the power of attorney was not applicable to the partial alienation of a chose in action. See Ames, *Cases on Trusts,* (2d ed.) pp. 63, 64. In many code states, however, a court of law will now enforce the partial assignee's claim against the debtor. The result is that the partial assignee's interest is no longer exclusively equitable, but concurrently legal and equitable. See Professor Cook, Alienability of Choses in Action (1917) 30 HARV. L. REV. 449, 455; *Dickinson v. Tysen* (1913) 209 N. Y. 395, 397; *School District v. Edwards* (1879) 46 Wis. 150; *Guagler v. Chicago, Maud P. S. Ry. Co.* (1912) 197 Fed. 79. Most jurisdictions require that the assignor be joined as a party to the suit against the debtor. This rule is merely one of procedure to be complied with in order to protect the defendant against a multiplicity of suits. *O'Dougherty v. Remington Paper Co.* (1880) 81 N. Y. 496; *United States v. Throckmorton* (1878) 98 U. S. 61; *Hughes v. Dundee Co.* (1886) 26 Fed. 831. It may be waived by consent of the parties. *The Fourth National Bank v. Noonan* (1884) 14 Mo. App. 243; aff'd. (1885) 88 Mo. 372; *Flanders v. Canada, etc., Co.* (1908) 161 Fed. 378; aff'd. (1908) 165 Fed. 321. The partial assignee will thus be allowed to sue alone. *Risley v. Phenix Bank* (1881) 83 N. Y. 318; *Caledonia Ins. Co. v. Northern Pacific Ry. Co.* (1904) 32 Mont. 46. Non-joinder of the assignor being demurrable, it seems perfectly justifiable to interpret the defendant's silence on the point as a waiver of his privilege and power to object to